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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,912	09/29/2003	Gouichi Nishizawa	81864.0025	2084
26021	7590	06/20/2006	EXAMINER	
HOGAN & HARTSON L.L.P. 500 S. GRAND AVENUE SUITE 1900 LOS ANGELES, CA 90071-2611				SHEEHAN, JOHN P
ART UNIT		PAPER NUMBER		
		1742		

DATE MAILED: 06/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/675,912	NISHIZAWA ET AL.	
	Examiner	Art Unit	
	John P. Sheehan	1742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 14 April 2006.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-11 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Terminal Disclaimer

1. The terminal disclaimer filed on April 24, 2006 disclaiming the terminal portion of any patent granted on this application, which would extend beyond the expiration date of US Patent No. 6,811,620 and Serial Nos. 10/675,230 and 10/799,153 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 102/103

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 to 11 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Yamamoto et al. (Yamamoto, EP 1 164 599 A2).

Yamamoto teaches a sintered rare earth magnet having a composition that overlaps the composition recited in the applicants' claims (page 4, paragraph 0041). Yamamoto also teaches that zirconium is uniformly dispersed in the sintered magnet (for example see, page 4, paragraph 0039, lines 1 to 5 and paragraph 0040, lines 4 to 7). Further, Yamamoto teaches specific examples of sintered magnets having compositions that are encompassed by the instant claims (page 8, Example 3-3, paragraph 0071; and Example 3-4, paragraph 0072) wherein the zirconium is uniformly dispersed as in the instant claims (page 8, paragraph 0074).

The claims and Yamamoto differ in that Yamamoto is silent with respect to the coefficient of variation showing the dispersion of the Zr as recited in the applicants' claims.

However, one of ordinary skill in the art at the time the invention was made would have considered the invention to have been obvious because the sintered magnets taught by Yamamoto have a compositions that are encompassed by the instant claims and are made by a process which is similar to, if not the same as, applicants' process of making the instantly claimed alloy. Further, Yamamoto specifically teaches that the zirconium in the disclosed sintered magnets is uniformly dispersed. In view of all of this, Yamamoto's sintered magnets would be expected to posses the coefficient of variation showing the dispersion degree of zirconium as recited in the instant claims, *In re Best*, 195 USPQ, 430 and MPEP 2112.01.

"Where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a *prima facie* case of either anticipation or obviousness has been established, *In re Best*, 195 USPQ

430, 433 (CCPA 1977). 'When the PTO shows a sound basis for believing that the products of the applicant and the prior art are the same, the applicant has the burden of showing that they are not.' In re Spada, 15 USPQ2d 655, 1658 (Fed. Cir. 1990). Therefore, the *prima facie* case can be rebutted by evidence showing that the prior art products do not necessarily possess the characteristics of the claimed product. In re Best, 195 USPQ 430, 433 (CCPA 1977)." see MPEP 2112.01.

Response to Arguments

4. Applicant's arguments filed April 14, 2006 have been fully considered but they are not persuasive.
5. Applicants, relying on the data set forth in applicants' Figure 2, argue that Yamamoto's Example 3-3 uses a high rare earth content Zr containing alloy (high-R alloy) in the powder mixture used to make the sintered magnet which results in a magnet having a CV index of 150 or greater. Applicants further argue that on the other hand the data in applicants' Figure 2 demonstrates that to obtain a CV of 130 or less (as recited in applicants' claims 1 to 7) requires using a low rare earth content Zr containing alloy (low R-alloy) in the powder mixture used to make the sintered magnet. The Examiner is not persuaded. The data in applicants' Figure 2 and the data in applicants' Figure 9 (Alloys Nos. 58 and 66) are not consistent. Each of Alloys Nos. 58 and 66 are made by applicant's disclosed method of using a low rare earth content Zr containing alloy in the powder mixture used to make the sintered magnet. However, Alloy Nos. 58 and 66 possess CV values of 142 and 150 respectively. This is contrary to applicants' arguments and the data set forth in applicants' Figure 2.

6. Regarding claim 8, applicants, referring to Yamamoto's Example 3-4, argue that Yamamoto does not disclose or suggest a suitable sintering temperature of 40⁰C or more. The Examiner is not persuaded in that Yamamoto teaches that "the optimal sintering temperature range can be broadened by from 20 to 60⁰C" (page 5, line 53, emphasis added by the Examiner). Thus, since Yamamoto teaches that the optimal sintering range can be broadened by 20 to 60⁰C, Yamamoto is considered to teach an optimal sintering range, that is, a suitable sintering temperature range, of at least 20 to 60⁰C.

Conclusion

2. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John P. Sheehan whose telephone number is (571)

272-1249. The examiner can normally be reached on T-F (6:45-4:30) Second Monday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on (571) 272-1244. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



John P. Sheehan
Primary Examiner
Art Unit 1742

jps